IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1069 OF 1995

The Oriental Insurance Co. Ltd. ..Appellants

versus

Shri D. B. Yadav & Ors. ..Respondents

Mr. Sunil S. Bhide for the Appellants.

Mr. R. V. More for the Respondents No. 1 & 2.

CORAM : D. G. DESHPANDE,J.

DATE : 5TH APRIL,2005

ORAL ORDER :

1. Heard learned counsel for the parties.

2. Insurance Company has filed this appeal against the order of the MACT, Solapur, dated 31.8.1994 directing Insurance Company and other respondents to pay jointly and severally the amount of Rs.1,70,040/-.

3. The accident in this case took place on 3.2.1991.The deceased was working as a Gateman at Modnimb Railway Station and his death was on account of dash use of the truck MH-13/B-407. The fact that the deceased died as a result of the accident, that

it was because of the vehicle MH-13/B-407, as referred above and that the vehicle was insured with the present appellants, are not disputed. The only question that is agitated before this court by the appellants is whether the cliamants are entitled to compensation from Insurance company when in fact they had received compensation under the Workmen's Compensation Act. According to the counsel for the appellants claimants cannot claim double benefit of compensation under the two different statutory provisions. If claimants were compensated under the Workmen's Compensation Act, then, firstly, they cannot get compensation under the Accidents Claims and secondly and alternatively the insurance company is entitled for deduction of Rs.84,760/- which was paid to the claimants under the Workmen's Compensation Act.

4. Counsel for the appellants relied upon the judgment of the **Orissa High Court reported in 1977 A.C.J. 512 National Insurance Co. Ltd. vs. Harerrushna Sahu and others.** As against this, counsel for the respondents relied upon the judgment of **Division Bench of this court reported in 1991 Mh.L.J. 1542 Shantabai Parshuram Mule and others vs. Sharda Prasadsingh & Others.** This court has held that in order to attract provisions of Section 110-A of the Motor Vehicles Act, and Sections 8 and

10 of the Workmen's Compensation Act, What is necessary is that workmen must have initiated a claim for compensation in respect of the injury before the Commissioner. In the instant case the Tribunal found that there was nothing on record to show that proceedings were initiated at the instance of the claimants under the Workmen's Compensation Act. Counsel for the respondents pointed out that since the deceased was a railway employee, the Railways deposited the claim before the Workmens Compensation Act, which the claimants withdrew. He therefore contended that Judgment of Orissa High Court relied upon by the appellants, firstly, does not apply to the present case because in that case it is not clear whether the claimants had initiated the proceedings. He however urged that looking to the judgment of the Division Bench, referred to above, which makes a distinction between compensation received by the claimants automatically and compensation received by the claimants at their own instance by initiating proceedings by them, no interference is called for in the impugned order.

5. Perusal of the judgment of the Tribunal shows that this aspect has been rightly considered and the court came to the conclusion that in the circumstances, it would not be said that proceeding before the respondents for compensation under the

Workmen’s Compensation Act, were initiated at the instance of the claimants. Section 167 of the Motor Vehicles act 1988 is analogous to Section 110(A) of the 1939 Act, it gives an option to a person to claim compensation either under the Workmen’s Compensation Act or under Motor Vehicles Act but the phraseology used is "person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both". The Division Bench has considered the provisions of Section 3 sub section 5 of the Workmens Compensation Act and with reference to Section 167 or 110AA of the Motor Vehicles Act and has given a clear finding in this regard. Therefore, in view of this Division Bench Judgment, the Judgment of Orissa High Court relied upon by the Counsel for the appellants cannot be of any help. Only one submission is made by the counsel for the appellants, the same cannot be accepted. Therefore no interference is called for. Appeal is dismissed. In the circumstances no order as to costs.

5.04.2005 (D.G. DESHPANDE, J.)